

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

JAMES E. DAVIS, ET AL.

PLAINTIFFS

vs.

CAUSE NO. 3:11-CV-093-MPM-SAA

**ACA FINANCIAL GUARANTY
CORPORATION**

DEFENDANT

**DEFENDANT ACA FINANCIAL GUARANTY CORPORATION'S
MOTION FOR PARTIAL SUMMARY DECLARATORY JUDGMENT**

Defendant ACA Financial Guaranty Corporation (ACA) moves the Court to enter a partial summary declaratory judgment on Defendant ACA's obligation to provide coverage under the terms of the financial guaranty insurance policies it issued, as set out below and in the attached proposed judgment. This request was first presented to the court by FRCP Rule 56 motion of Defendant ACA Financial Guaranty Corporations (ACA) for the entry of a summary declaratory judgment against ACA, in favor of the Plaintiffs.¹ This matter is now being presented to the Court on the single request to have the court enter the partial summary judgment for declaratory relief.

In an attempt to present this motion to the Court as a joint motion, ACA presented a proposed motion and judgment to plaintiffs' counsel for agreement November 6. Plaintiffs submitted proposed revisions to the motion and judgment to counsel for ACA on November 21. There were some revisions to the motion that were accurate and acceptable to ACA, but plaintiffs' changes to the proposed judgment were not accurate or acceptable. Thus, while ACA believes that in theory plaintiffs do not oppose the entry of the requested judgment, plaintiffs

¹ That motion for summary judgment (Doc. 112) had other requests for relief, and the court denied the motion, without prejudice, pending completion of discovery. Doc. 141.

have not agreed to the form of this motion or of the judgment submitted contemporaneously to the Court. Pursuant to Federal Rules of Civil Procedure 56, Defendant moves:

1. For a partial summary declaratory judgment binding ACA, stating that this Court adopts the New York Appellate Division's September 3, 2013 *Oppenheimer* decision *mutatis mutandis*—namely, that ACA is obligated to provide coverage under the terms of the financial guaranty insurance policies it issued, with the only change being that such declaratory judgment is also deemed to apply to CUSIP nos. 20786LCS8 and 20786LCU3, in addition to the four CUSIPs already expressly covered by the *Oppenheimer* decision (nos. 20786LCV1, 20786LCW9, 20786LCX7, and 20786LCY5). There would be no award of costs with respect to this summary declaratory judgment, and all costs will be borne by the party who has incurred them.

2. That ACA be relieved of the requirement to file a separate memorandum of law, because the Court has previously been advised of the request and the reasons for the granting of this relief.

Respectfully Submitted, November 22, 2013.

/s/David W. Clark

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CERTIFICATE OF SERVICE

I hereby certify that on November 22 2013, I filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ David W. Clark
OF COUNSEL